

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROBERT RYERSON, Individually and on Behalf Of  
All Other Persons Similarly Situated,

Plaintiffs,

- against -

MERRILL LYNCH & CO, INC. and MERRILL  
LYNCH, PIERCE, FENNER & SMITH, INC.

Defendants.

CASE NO.: 07 CV 3564-RWS

**JOINT RULE 26(F) REPORT**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and this Court's July 3, 2007, Pretrial Order, the parties submit this Joint Report. In preparation for this filing, the parties met telephonically on August 14, 2007.

**I. FEDERAL RULE OF CIVIL PROCEDURE 26(F)**

**A. Initial Disclosures**

Pursuant to Rule 26(a), the parties have exchanged initial disclosures.

**B. Subjects and Timing of Discovery**

The parties agree that the subjects of discovery should include Plaintiff's duties and compensation and the appropriateness of collective action certification.

The parties disagree as to whether discovery in this matter should be bifurcated. Plaintiff contends that all discovery should be completed before the issue of collective action certification is resolved. Defendant contends that discovery should proceed at this time only as to Plaintiff's individual claim and any additional discovery necessary to resolve the question of collective action certification.

The parties do agree, subject to the Court's approval and resolution of the bifurcation issue, to a fact discovery cut-off date of April 30, 2008.

### **C. Discovery of Electronically Stored Information ("ESI")**

The parties disagree about the appropriate scope of discovery of ESI at this time. Plaintiff seeks discovery of payroll records and emails for the entire putative collective action class. Defendant has agreed to find out the form in which these records and emails are stored, but Defendant believes that electronic discovery at this time should be limited to payroll records and certain emails related to Plaintiff. Defendant has proposed that Plaintiff provide a list of individuals with whom he had email correspondence regarding matters relevant to the issues in this lawsuit so that email correspondence between him and those individuals can be produced. Defendant has also asked that Plaintiff define his proposed class in order to understand better the scope of the parties' dispute about the production of payroll records and email for additional putative collective action class members. Defendant believes that Plaintiff should bear all or a significant portion of the cost for the production of ESI pertaining to putative collective action class members prior to any certification of a collective action class.

Plaintiff believes that Defendant should produce all emails related to the subject matter of this litigation, regardless of the sender and recipient. It is also Plaintiff's position that

Defendant should produce electronic discovery of all payroll information related to those employees with the same or similar positions, jobs or job titles.

Once the scope of ESI discovery is determined, the parties will confer about the potential need for search term filtering and, if needed, to discuss specific search terms.

**D. Claims of Privilege or Protection**

The parties do not anticipate any unique or particular issues related to claims of privilege.

**E. Changes in Discovery Limitations**

The parties agree that no changes should be made to the limitations on discovery imposed under the Federal Rules or Local Rules.

Dated: September , 2007

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